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18
19 **UNITED STATES DISTRICT COURT**

20 **DISTRICT OF NEVADA**

21 ALTO VENTURES, INC.,

CASE NO.: 2:11-cv-01056-PMP-GWF

22 Plaintiff,

23 v.

**[PROPOSED] STIPULATED PROTECTIVE
ORDER**

24 CONVERGYS CORP.; FIVE9, INC.;
TELETECH HOLDINGS, INC.;
25 TRANSERA COMMUNICATIONS,
INC.; WEST CORP.; and WSOL, INC.
(d/b/a WORKING SOLUTIONS),

26
27 Defendants.

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in the above-captioned action are likely to involve
 3 production of confidential, proprietary, or private information for which special protection from
 4 public disclosure and from use for any purpose other than prosecuting this litigation may be
 5 warranted. Accordingly, plaintiff Alto Ventures, Inc. (“Plaintiff”) and defendants Five9, Inc.,
 6 Teletech Holdings, Inc., Transera Communications, Inc., West Corp., and WSOL, Inc.
 7 (collectively, “Defendants”) hereby stipulate to and petition the court to enter the following
 8 Stipulated Protective Order (“Protective Order”). The parties acknowledge that this Protective
 9 Order does not confer blanket protections on all disclosures or responses to discovery and that the
 10 protection it affords from public disclosure and use extends only to the limited information or
 11 items that are entitled to confidential treatment under the applicable legal principles. The parties
 12 further acknowledge that this Protective Order does not entitle them to file confidential
 13 information under seal; Local Rule 10-5(b) sets forth the procedures that must be followed when
 14 a party seeks permission from the court to file material under seal.

15 **2. DEFINITIONS**

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 17 information or items under this Protective Order.

18 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
 19 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
 20 of Civil Procedure 26(c), including all non-public information or matter related to: financial or
 21 business plans or projections; acquisition offers or expressions of interest; proposed strategic
 22 transactions or other business combinations; compensation plans; proprietary technical
 23 information and specifications; current or future business and marketing information, plans, and
 24 strategies; studies or analyses by internal or outside experts; customer information, data, or lists;
 25 confidential financial data or results; tax data; confidential information regarding assets and
 26 liabilities; valuations analysis; competitive analyses; confidential personnel information; personal
 27 financial information; personal information subject to protection under Nevada law; or other
 28 commercially or personally sensitive or proprietary information. Notwithstanding the foregoing,

1 “CONFIDENTIAL” Information or Items shall not mean information or documents produced or
 2 disclosed that are or become, without violating this Protective Order, and apart from production
 3 or disclosure in connection with this Action, a matter of public record or publicly available by law
 4 or otherwise.

5 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
 6 well as their support staff).

7 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
 8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

9 2.5 Designating Party: a Party or Non-Party that designates information or items that it
 10 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
 11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE
 12 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

13 2.6 Disclosure or Discovery Material: all items or information, regardless of the
 14 medium or manner in which it is generated, stored, or maintained (including, among other things,
 15 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
 16 responses to discovery in this matter.

17 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
 18 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
 19 as a consultant in this Action, (2) is not a current employee of a Party, and (3) at the time of
 20 retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

21 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
 22 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
 23 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
 24 less restrictive means. Notwithstanding the foregoing, “HIGHLY CONFIDENTIAL –
 25 ATTORNEYS’ EYES ONLY” Information or Items shall not mean information or documents
 26 produced or disclosed that are or become, without violating this Protective Order, and apart from
 27 production or disclosure in connection with this Action, a matter of public record or publicly
 28 available by law or otherwise.

1 2.9 "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY"

2 Information or Items: extremely sensitive "Confidential Information or Items," such as settlement
 3 agreements and documents containing sensitive financial or personal information, disclosure of
 4 which to anyone other than Outside Counsel of Record (and others described in section 7.4
 5 below) would create a substantial risk of serious harm that could not be avoided by less restrictive
 6 means. Notwithstanding the foregoing, "HIGHLY CONFIDENTIAL – OUTSIDE
 7 ATTORNEYS' EYES ONLY" Information or Items shall not mean information or documents
 8 produced or disclosed that are or become, without violating this Protective Order, and apart from
 9 production or disclosure in connection with this Action, a matter of public record or publicly
 10 available by law or otherwise.

11 2.10 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:
 12 extremely sensitive "Confidential Information or Items" representing computer code and
 13 associated comments and revision histories, disclosure of which to another Party or Non-Party
 14 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

15 2.11 House Counsel: attorneys who are employees of a party to this Action. House
 16 Counsel does not include Outside Counsel of Record or any other outside counsel.

17 2.12 Non-Party: any natural person, partnership, corporation, association, or other legal
 18 entity that is not a Party to this Action.

19 2.13 Outside Counsel of Record: attorneys who are not employees of a party to this
 20 Action but are retained to represent or advise a party to this Action and have appeared in this
 21 Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
 22 that party.

23 2.14 Party: any party to this Action, including all of its officers, directors, employees,
 24 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

25 2.15 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
 26 Material in this Action.

27 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
 28 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,"

1 "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" or as "HIGHLY
 2 CONFIDENTIAL – SOURCE CODE."

3 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 4 Producing Party.

5 **3. SCOPE**

6 Except as the Designating Party or its counsel may otherwise agree in writing, or as the
 7 Court may otherwise order, all Discovery Material marked or otherwise identified as
 8 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,"
 9 "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" or "HIGHLY
 10 CONFIDENTIAL – SOURCE CODE" and received by any Receiving Party pursuant to this
 11 Protective Order: (a) shall be disclosed only to such persons and in such manner as set forth in
 12 this Protective Order; (b) shall be used solely for the purposes of preparation for trial, trial of
 13 and/or appeal from this Action and no other; and (c) shall not be used by the Receiving Party for
 14 any other purposes, including, without limitation, any business or commercial purpose. The
 15 foregoing prohibitions on the use of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 16 ATTORNEYS' EYES ONLY," "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS'
 17 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information shall survive the
 18 termination of this Action.

19 This Protective Order has no effect upon, and shall not apply to, the Parties' use of their
 20 own "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,"
 21 "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" or "HIGHLY
 22 CONFIDENTIAL – SOURCE CODE" information for any purpose. Nothing in this Protective
 23 Order shall: (i) prevent a Designating Party from disclosing its own "CONFIDENTIAL" or
 24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," "HIGHLY CONFIDENTIAL –
 25 OUTSIDE ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE"
 26 information to officers, directors, employees, agents, or advisors, including investment bankers
 27 and accountants, of the Designating Party; or (ii) impose any restrictions on the use or disclosure
 28 by a Party of documents, materials, or information designated "CONFIDENTIAL" or "HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE
 2 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information
 3 if such documents, materials, or information was both lawfully obtained by and lawfully retained
 4 in the possession of such Party independently of the discovery proceedings in this Action.

5 The protections conferred by this Stipulation and Protective Order cover not only
 6 Protected Material (as defined above), but also (1) any information copied or extracted from
 7 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and
 8 (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal
 9 Protected Material. However, the protections conferred by this Stipulation and Protective Order
 10 do not cover the following information: (a) any information that is in the public domain at the
 11 time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure
 12 to a Receiving Party as a result of publication not involving a violation of this Protective Order,
 13 including becoming part of the public record through trial or otherwise; and (b) any information
 14 known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
 15 disclosure from a source who obtained the information lawfully and under no obligation of
 16 confidentiality to the Designating Party.

17 **4. DURATION**

18 Even after final disposition of this litigation, the confidentiality obligations imposed by
 19 this Protective Order shall remain in effect until a Designating Party agrees otherwise in writing
 20 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
 21 dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final
 22 judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or
 23 reviews of this Action, including the time limits for filing any motions or applications for
 24 extension of time pursuant to applicable law.

25 **5. DESIGNATING PROTECTED MATERIAL**

26 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party
 27 or Non-Party that designates information or items for protection under this Protective Order must
 28 take care to limit any such designation to specific material that qualifies under the appropriate

1 standards. To the extent it is practical to do so, the Designating Party must designate for
 2 protection only those parts of material, documents, items, or oral or written communications that
 3 qualify – so that other portions of the material, documents, items, or communications for which
 4 protection is not warranted are not swept unjustifiably within the ambit of this Protective Order.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 6 Protective Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
 7 or ordered, Disclosure or Discovery Material that qualifies for protection under this Protective
 8 Order must be clearly so designated before the material is disclosed or produced.

9 Designation in conformity with this Protective Order requires:

10 (a) for information in documentary form (e.g., paper or electronic documents, but
 11 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
 12 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 13 EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or
 14 “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected material.

15 A Party or Non-Party that makes original documents or materials available for inspection
 16 need not designate them for protection until after the inspecting Party has indicated which
 17 material it would like copied and produced. During the inspection and before the designation, all
 18 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
 19 ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’
 20 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. After the inspecting Party
 21 has identified the documents it wants copied and produced, the Producing Party must determine
 22 which documents, or portions thereof, qualify for protection under this Protective Order. Then,
 23 before producing the specified documents, the Producing Party must affix the appropriate legend
 24 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”
 25 “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or “HIGHLY
 26 CONFIDENTIAL – SOURCE CODE” to each page that contains Protected Material.

27 (b) for testimony given in deposition, that the Designating Party identify on the
 28 record, before the close of the deposition all protected testimony and specify the level of
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protection being asserted. When it is impractical to identify separately each portion of testimony that is entitled to protection and it appears that substantial portions of the testimony may qualify for protection, the Designating Party may invoke on the record (before the deposition, is concluded) a right to have up to 21 days after receiving a copy of the final, hard copy transcript to identify in writing the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated. Only those portions of the testimony that are appropriately designated for protection within the 21 days shall be covered by the provisions of this Protective Order. In both of the foregoing instances, counsel for the Designating Party shall direct that the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” be affixed to the portions of the original and all copies of the transcript. The parties may modify this procedure for any particular deposition through agreement on the record at such depositions without further order of the Court.

The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. If only a portion or portions of the information or item warrant protection, the

1 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the
 2 level of protection being asserted.

3 5.3 Inadvertent Failures to Designate. Inadvertent failure to designate Discovery
 4 Material as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 5 ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or “HIGHLY
 6 CONFIDENTIAL – SOURCE CODE” shall not constitute a waiver of such claim and may be
 7 corrected by prompt supplemental notice designating such Discovery Material as
 8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”
 9 “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or “HIGHLY
 10 CONFIDENTIAL – SOURCE CODE” in a manner consistent with Paragraph 5.2. Upon receipt
 11 of such supplemental written notice, the Receiving Party must make reasonable efforts to assure
 12 that the material is treated in accordance with the provisions of this Protective Order. A person
 13 disclosing Discovery Material that is subsequently designated as “CONFIDENTIAL” or
 14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL –
 15 OUTSIDE ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
 16 shall in good faith assist the Designating Party in retrieving such Discovery Material from all
 17 recipients not entitled to receive such Discovery Material under the terms of this Protective Order
 18 and prevent further disclosure except as authorized under the terms of this Protective Order.

19 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 21 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
 22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 23 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 24 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 25 original designation is disclosed.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
 27 process by providing written notice of each designation it is challenging and describing the basis
 28 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
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1 notice must recite that the challenge to confidentiality is being made in accordance with this
 2 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
 3 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
 4 forms of communication are not sufficient) within 7 days of the date of service of notice. In
 5 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
 6 designation was not proper and must give the Designating Party an opportunity to review the
 7 designated material, to reconsider the circumstances, and, if no change in designation is offered,
 8 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
 9 stage of the challenge process only if it has engaged in this meet and confer process first or
 10 establishes that the Designating Party is unwilling to participate in the meet and confer process in
 11 a timely manner.

12 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 13 intervention, a Challenging Party that elects to press a challenge to the confidentiality designation
 14 after considering the justification offered by the Designating Party may file and serve a motion
 15 under Local Rule 7-2 that identifies the challenged material and sets forth in detail the basis for
 16 the challenge. Each motion must be accompanied by a competent declaration that affirms that the
 17 movant has complied with the meet and confer requirements imposed in the preceding
 18 subparagraph and that sets forth with specificity the justification for the confidentiality
 19 designation that was given by the Designating Party in the meet and confer dialogue.

20 Until the Court rules on the challenge, all parties shall continue to afford the material in
 21 question the level of protection to which it is entitled under the Producing Party's designation
 22 until the court rules on the challenge.

23 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 25 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 26 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
 27 to the categories of persons and under the conditions described in this Protective Order. When
 28

1 the litigation has been terminated, a Receiving Party must comply with the provisions of section
 2 14 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location and
 4 in a secure manner that ensures that access is limited to the persons authorized under this
 5 Protective Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
 7 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 8 information or item designated “CONFIDENTIAL” only to:

9 (a) Counsel to the Parties in this Action (Outside Counsel of Record and House
 10 Counsel, including members of the Outside Counsel of Record’s firms, associate attorneys,
 11 contract attorneys, paralegals, secretarial staff, clerical and other regular or temporary
 12 employees), and consultants and vendors of such Counsel to the Parties (including trial
 13 consultants, jury consultants, and service vendors, such as outside copying services, outside
 14 litigation support services, translations services, or graphics, design, or document handling
 15 services/consultants retained in connection with this Action for purposes of preparing
 16 demonstrative or other exhibits for deposition, trial, or other court proceedings). A Receiving
 17 Party may further disclose any information designated “CONFIDENTIAL” to mock jurors,
 18 provided that no Discovery Material designated as “CONFIDENTIAL” shall be disclosed to
 19 mock jurors unless and until such person has executed the “Acknowledgment and Agreement to
 20 Be Bound” that is attached hereto as Exhibit A;

21 (b) the officers, directors, and employees (including House Counsel) of the
 22 Receiving Party assisting counsel for the purposes of this Action, to whom disclosure is
 23 reasonably necessary for this litigation, and who have signed the “Acknowledgment and
 24 Agreement to Be Bound” (Exhibit A);

25 (c) Experts (as defined in this Protective Order) of the Receiving Party to whom
 26 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
 27 and Agreement to Be Bound” (Exhibit A);

(d) the Court and its staff and administrative personnel, and Court reporters, videographers, and stenographers employed to take depositions, and any essential personnel retained by the Court;

(e) the Producing Party (including its employees and representatives) that made such confidentiality designations, and the author or recipient of a document containing the information or a custodian or other person who otherwise received, possessed or knew the information; and

(f) any other person only upon order of the Court or upon stipulation of the Designating Party.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(a) the Receiving Party's Outside Counsel of Record in this Action (including members of the Outside Counsel of Record's firm, associate attorneys, contract attorneys, paralegals, secretarial staff, clerical and other regular or temporary employees), and consultants and vendors of such Outside Counsel of Record to the Parties (including trial consultants, jury consultants, and service vendors, such as outside copying services, outside litigation support services, translations services, or graphics, design, or document handling services/consultants retained in connection with this Action for purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings). A Receiving Party may further disclose any information designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to mock jurors, provided that no Discovery Material designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" shall be disclosed to mock jurors unless and until such person has executed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

20 7.4 Disclosure of “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES
21 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by
22 the Designating Party, a Receiving Party may disclose any information or item designated
23 “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” only to:

1 services, translations services, or graphics, design, or document handling services/consultants
 2 retained in connection with this Action for purposes of preparing demonstrative or other exhibits
 3 for deposition, trial, or other court proceedings). A Receiving Party may further disclose any
 4 information designated “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES
 5 ONLY” to mock jurors, provided that no Discovery Material designated as “HIGHLY
 6 CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” shall be disclosed to mock jurors
 7 unless and until such person has executed the “Acknowledgment and Agreement to Be Bound”
 8 that is attached hereto as Exhibit A;

9 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
 10 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
 11 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.5 (a)(2), below, have been
 12 followed;

13 (c) the Court and its staff and administrative personnel, and Court reporters,
 14 videographers, and stenographers employed to take depositions, and any essential personnel
 15 retained by the Court;

16 (d) the Producing Party (including its employees and representatives) that made
 17 such confidentiality designations, and the author or recipient of a document containing the
 18 information or a custodian or other person who otherwise received, possessed or knew the
 19 information; and

20 (e) any other person only upon order of the Court or upon stipulation of the
 21 Designating Party.

22 7.5 Procedures for Approving or Objecting to Disclosure of “HIGHLY
 23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
 24 CODE” Information or Items to Designated House Counsel or Experts.

25 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
 26 Designating Party, a Party that seeks to disclose to Designated House Counsel any information or
 27 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
 28 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(b) first must make a

1 written request to the Designating Party that (1) sets forth the full name of the Designated House
 2 Counsel and the city and state of his or her residence, and (2) describes the Designated House
 3 Counsel's current and reasonably foreseeable future primary job duties and responsibilities in
 4 sufficient detail to determine if House Counsel is involved, or may become involved, in any
 5 competitive decision-making.

6 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
 7 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Protective Order)
 8 any information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS'
 9 EYES ONLY," "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" or
 10 "HIGHLY CONFIDENTIAL – SOURCE CODE" pursuant to paragraph 7.3(c) first must make a
 11 written request to the Designating Party that (1) the Receiving Party seeks to disclose to the
 12 Expert "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY
 13 CONFIDENTIAL – SOURCE CODE" information, (2) sets forth the full name of the Expert and
 14 the city and state of his or her primary residence, (3) attaches a copy of the Expert's current
 15 resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity from
 16 whom the Expert has received compensation or funding for work in his or her areas of expertise
 17 or to whom the expert has provided professional services, including in connection with a
 18 litigation, at any time during the preceding four years, and (6) identifies (by name and number of
 19 the case, filing date, and location of court) any litigation in connection with which the Expert has
 20 offered expert testimony, including through a declaration, report, or testimony at a deposition or
 21 trial, during the preceding four years.

22 (b) A Party that makes a request and provides the information specified in the
 23 preceding respective paragraphs may disclose the subject Protected Material to the identified
 24 Designated House Counsel or Expert unless, within 7 days of delivering the request, the Party
 25 receives a written objection from the Designating Party. Any such objection must set forth in
 26 detail the grounds on which it is based.

27 (c) A Party that receives a timely written objection must meet and confer with the
 28 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
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1 agreement within seven days of the written objection. If no agreement is reached, the Party
 2 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as
 3 provided in Local Rule 7-2 seeking permission from the court to do so.

4 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
 5 Expert shall bear the burden of: (a) proving that the risk of harm that the disclosure would entail
 6 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
 7 Material to its Designated House Counsel or Expert; and (b) demonstrating that it is otherwise
 8 entitled to protection under Fed. R. Civ. P. 26(c).

9 **7.6 Cross Production of Defendant Protected Information**

10 To the extent that any one of Defendants in this litigation provides Protected Material
 11 under the terms of this Protective Order to Plaintiff, there is no requirement that the Defendant
 12 provide such Protected Material to any other Defendant. Nothing in this paragraph, however,
 13 limits any Defendant from seeking access, for good cause shown, to any Protected Material that a
 14 Defendant provides to Plaintiff.

15 **8. PROSECUTION BAR**

16 Absent written consent from the Producing Party, from the date of entry of this Protective
 17 Order going forward, any individual who receives access to "HIGHLY CONFIDENTIAL –
 18 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS'
 19 EYES ONLY" (excluding financial information with such designation, such as revenues, costs,
 20 profits, expert damages reports, and the like), or "HIGHLY CONFIDENTIAL – SOURCE
 21 CODE" information, shall not be involved, after receipt of the protected information identified
 22 herein, in the "prosecution," of the patents asserted in this action, which includes the original
 23 prosecution, reissue, and reexamination proceedings, of the patents asserted in this action before
 24 any foreign or domestic agency, including the United States Patent and Trademark Office ("the
 25 Patent Office"). This Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL –
 26 ATTORNEYS' EYES ONLY," "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS'
 27 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information is first received
 28 by the affected individual and shall end one (1) year after final termination of this action. For
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1 purposes of this provision, paying maintenance fees shall not be considered prosecution activities
 2 and are specifically excluded from this bar. Notwithstanding anything to the contrary in this
 3 paragraph, a person that has seen or reviewed Protected Material as set forth herein is not
 4 prevented from reviewing communications from the United States Patent Office regarding
 5 reexamination proceedings of patents asserted in this action, or from discussing claim
 6 interpretation issues or ways of distinguishing claims in such reexamination from any cited prior
 7 art, including with re-examination patent counsel; however, such person may not prosecute any
 8 such reexamination and may not reveal the contents of Protected Material to re-examination
 9 counsel or agents.

10 **9. SOURCE CODE**

11 (a) To the extent production of source code becomes necessary in this case, a
 12 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE”
 13 if it comprises or includes confidential, proprietary or trade secret source code.

14 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
 15 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
 16 ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in Paragraph
 17 8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
 18 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and
 19 7.4, with the exception of Designated House Counsel.

20 (c) Any source code produced in discovery shall be made available for
 21 inspection, in a format allowing it to be reasonably reviewed and searched, during normal
 22 business hours or at other mutually agreeable times, at an office of the Producing Party’s counsel
 23 or another mutually agreed upon location. The source code shall be made available for inspection
 24 on a secured computer in a secured room without Internet access or network access to other
 25 computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion of
 26 the source code onto any recordable media or recordable device.

27 (d) The Receiving Party may request paper copies of limited portions of source
 28 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports,
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1 or other papers, or for deposition or trial, but shall not request paper copies for the purposes of
 2 reviewing the source code other than electronically as set forth in paragraph (c) in the first
 3 instance. The Producing Party shall provide all such source code in paper form including bates
 4 numbers and the label "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing Party
 5 may challenge the amount of source code requested in hard copy form pursuant to the dispute
 6 resolution procedure and timeframes set forth in Paragraph 6.

7 (e) The Receiving Party shall maintain a record of any individual who has
 8 inspected any portion of the source code in electronic or paper form. The Receiving Party shall
 9 maintain all paper copies of any printed portions of the source code in a secured, locked area.
 10 The Receiving Party shall not create any electronic or other images of the paper copies and shall
 11 not convert any of the information contained in the paper copies into any electronic format. The
 12 Receiving Party shall only make additional paper copies if such additional copies are (1)
 13 necessary to prepare court filings, pleadings, or other papers (including a testifying expert's
 14 expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its
 15 case. Any paper copies used during a deposition shall be retrieved by the Receiving Party at the
 16 end of each day and must not be given to or left with a court reporter or any other individual.

17 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 OTHER LITIGATION**

18 If a Party is served with a subpoena or a court order issued in other litigation that compels
 19 disclosure of any information or items designated in this Action as "CONFIDENTIAL" or
 20 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," "HIGHLY CONFIDENTIAL –
 21 OUTSIDE ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE"
 22 that Party must (to the extent allowed by law):

23 (a) promptly notify in writing the Designating Party. Such notification shall
 24 include a copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or order to issue
 26 in the other litigation that some or all of the material covered by the subpoena or order is subject
 27 to this Protective Order. Such notification shall include a copy of this Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material, and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Protective Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Protective Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall (1) promptly notify the Requesting Party in writing that some or all of the information requested is subject to a confidentiality agreement with a Non-Party; and (2) make reasonable efforts to produce the Non-Party's confidential information pursuant to the agreement governing such production.

(c) If the Non-Party timely seeks a protective order to prevent disclosure of its confidential information, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Protective Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

**13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). The inadvertent production of any Discovery Material shall be without prejudice to any claim that such Discovery Material is privileged or protected from discovery as work product or by reason of any other applicable privilege or immunity, including without limitation the attorney-client privilege, and no Party or non-party shall be held to have waived any rights by such inadvertent production. This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach any further agreements on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the Protective Order submitted to the court.

1 **14. MISCELLANEOUS**

2 14.1 Right to Further Relief. Nothing in this Protective Order abridges the right of any
3 person to seek its modification by the court in the future.

4 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
5 Order no Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Protective Order. Similarly, no Party
7 waives any right to object on any ground to use in evidence of any of the material covered by this
8 Protective Order.

9 14.3 Filing Protected Material. A Party may not file in the public filing in this Action
10 any Protected Material of the Designating Party without seeking leave to file the material under
11 seal; this does not impact exhibits or other materials to be used at hearings or trial. A Party that
12 seeks to file under seal any Protected Material must comply with Local Rule 10-5(b). Protected
13 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue. If a Receiving Party's request to file Protected Material under
15 seal pursuant to Local Rule 10-5(b) is denied by the court, then the Receiving Party may file the
16 Protected Material in the public record unless otherwise instructed by the court.

17 **15. FINAL DISPOSITION**

18 Within 60 days after the final disposition of this Action, as defined in paragraph 4, each
19 Receiving Party must return all Protected Material to the Producing Party or destroy such
20 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
21 compilations, summaries, and any other format reproducing or capturing any of the Protected
22 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
23 submit a written certification to the Producing Party (and, if not the same person or entity, to the
24 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
25 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
26 not retained any copies, abstracts, compilations, summaries, or any other format reproducing or
27 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
28 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,

1 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
 2 product, and consultant and expert work product, even if such materials contain Protected
 3 Material. Any such archival copies that contain or constitute Protected Material remain subject to
 4 this Protective Order as set forth in Section 4 (DURATION).

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 Dated this 24th day of February, 2012.

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IT IS SO ORDERED:

UNITED STATES MAGISTRATE JUDGE

DATED: February 27, 2012

1 EXHIBIT A
23 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of _____
 5 [print or type full address], declare under penalty of perjury that I have read in its entirety and
 6 understand the Stipulated Protective Order that was issued by the United States District Court for
 7 the District of Nevada on [date] in the case of *Alto Ventures, Inc. v. Convergys Corp., et al.*, 2:11-
 8 cv-01056-PMP-CWH. I agree to comply with and to be bound by all the terms of this Stipulated
 9 Protective Order, and I understand and acknowledge that failure to so comply could expose me to
 10 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
 11 any manner any information or item that is subject to this Stipulated Protective Order to any
 12 person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
 14 District of Nevada the purpose of enforcing the terms of this Stipulated Protective Order, even if
 15 such enforcement proceedings occur after termination of this Action.

16 I hereby appoint _____ [print or type full name] of
 17 _____ [print or type full address and telephone number] as my California agent for service of process in connection with
 18 this Action or any proceedings related to enforcement of this Stipulated Protective Order.

19 Date: _____
 20

21 City and State where sworn and signed: _____
 22

23 Printed name: _____
 24 [printed name]

25 Signature: _____
 26 [signature]
 27
 28